



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/167564

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 20, 2015, at Racine, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly reduced the Petitioner's FS benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Madeline Rice

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On December 19, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$16/month effective January 1, 2015. This was based on a

household size of one, income of \$44.78/month from Supplemental Security Income, \$827/month from Social Security, rent of \$305/month and a phone utility expense.

3. On January 7, 2015, the agency notified the Petitioner that it would issue a supplement to him based on his residence in subsidized housing. The agency received clarification later that day that individuals in subsidized housing do not get an additional utility deduction.
4. On January 8, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would be \$16/month. The Petitioner contacted the agency to request a fair hearing.
5. On March 23, 2015, the Petitioner completed his renewal. He did not report any changes. On March 24, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would remain at \$16/month.
6. The Petitioner pays \$30/month additional to his landlord for air conditioning in June, July and August.
7. On July 28, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 178 days after the date of the action to reduce his benefits. However, I note that the Petitioner contacted the agency on January 8, 2015 to request a fair hearing and was told that a fair hearing request form would be sent to him. There is no indication that a form was sent to him. On July 20, 2015, the Petitioner made a second request for fair hearing and a form was sent to him. Since phone requests for fair hearing are allowed, I conclude that the Petitioner first made a request for a fair hearing on January 8, 2015 regarding the reduction in benefits effective January 1, 2015 and that his request is, therefore, timely.

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income, including earned and unearned income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month for a one-person household. 7 C.F.R. §273.9(d)(1); Wisconsin FoodShare Handbook (FSH), § 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FSH, § 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FSH, § 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FSH, § 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FSH, § 4.6.7.

The FSH lists the shelter expenses that are deductible:

1. Rent
2. Home mortgage and property taxes (if not in the mortgage). Homestead property may consist of multiple sections of land for tax purposes. Since the household is responsible for all taxes owed on the homestead property, the taxes owed on all sections of the property are allowed as a deduction.
3. Countable utility expenses
4. Mobile home lot rent and loan payments
5. Insurance on the structure (if not included in the mortgage). If a household has a homeowner's insurance policy that includes insurance on the structure and household

contents, but the costs cannot be separately identified, the total cost is allowable. Note: renter's insurance is not an allowable shelter deduction.

6. Second mortgage or home equity line of credit (regardless of what the mortgage is used for)

7. Special assessments.

8. Condominium fees or condo association fees.

Do not count as shelter or utility expenses such surcharges as pet expenses, extra garage rentals, or air conditioning surcharges. The monthly amount of rent should be taken into consideration each month when the shelter deduction is determined without regard to when the rent is actually paid. Only allow current monthly expenses. **DO NOT** include arrearages, late charges or discounts for early payment.

FSH, §4.6.7.2.

On April 28, 2014, a change was made to the standard utility allowance/deduction available to households receiving FS benefits. See DHS Operations Memo 14-16. Households that have received a payment from the Wisconsin Housing Energy Assistance Program (WHEAP) in the previous 12 months receive the full Housing Standard Utility Allowance (HSUA) of \$446/month. Households that pay two or more non-heat qualifying utility expenses (phone, water, sewer, electric, cooking fuel, or trash) receive a Limited Utility Allowance (LUA) of \$321/month. Households that pay only a non-heat electric bill receive an Electric Utility Allowance (EUA) of \$161/month. Household that pay only water, sewer, septic tank installation/maintenance or wastewater treatment bills receive a Water and Sewer Utility Allowance (WUA) of \$75/month. Household that pay only a cooking fuel expense receive a Fuel Utility Allowance (FUA) of \$37/month. Households that pay only a telephone expense, including cell phones, receive a Phone Utility Allowance (PUA) of \$30/month. Households that pay only a trash or garbage bill receive a Garbage and Trash Utility Allowance (TUA) of \$19/month.

The Wisconsin FS policy specifically prohibits treating the air conditioning surcharges as shelter expenses. The policy also clearly states the allowed utility standards. I have no authority to disregard the clearly stated policies. I have reviewed the FS budgets, and I can find no error in the agency's determination of the Petitioner's FS benefits.

I note that the Petitioner indicated at the hearing that he has out-of-pocket medical expenses each month. The Petitioner was advised that he can submit receipts of those expenses to the agency for review with regard to whether the expenses can be used as a deduction. Any determinations made about those expenses submitted to the agency after the hearing in this matter are not a part of this decision and the Petitioner must file a new request for a hearing if he disagrees with the agency determination.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's FS benefits.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

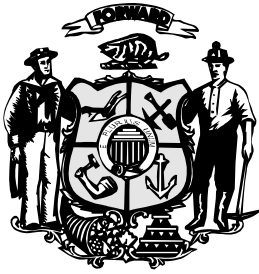
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of September, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 22, 2015.

Racine County Department of Human Services
Division of Health Care Access and Accountability